

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KENNETH ALAN THOMAS, #407930 §
VS. § CIVIL ACTION NO. 4:08cv16
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION AND ORDER

Petitioner filed a motion for reconsideration (docket entry #25) of the final judgment in this case. In his motion for relief, Petitioner urges that the Court consider his objections although they were not timely filed. Because Petitioner states that the prison returned his objections, which resulted in the untimely filing, this Court has reviewed them in the interest of justice. Having considered the objections, they have been found to be without merit. Petitioner has failed to show that the Report and Recommendation was erroneous. He simply reurges the issues presented in his petition. He also complains that this Court did not address his petition for writ of mandamus, which he filed with the Fifth Circuit Court of Appeals. It is not appropriate for this Court to address his mandamus petition filed in another court. However, the Fifth Circuit denied Petitioner's writ of mandamus; thus, the matter is moot. Petitioner has failed to show that the failure to grant his motion for relief filed pursuant to Rule 60 will result in a grave miscarriage of justice.

Moreover, Petitioner lists Neil Lee Durrance as his legal representation on his writ of habeas corpus. However, he filed *pro se* objections and a *pro se* motion for relief from judgment. There is no constitutional right to hybrid representation. *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984); *Myers v. Johnson*, 76 F.3d 1330, 1335 (5th Cir. 1996). Since Petitioner is represented by counsel, he has waived the right to present his own *pro se* motions, petitions and documents. *Myers*, 75 F.3d at 1335. It is accordingly

ORDERED that Petitioner's motion (docket entry #25) is **DENIED**.

It is SO ORDERED.

SIGNED this 28th day of March, 2012.



Michael H. Schneider
MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE